

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Apr 27, 2015, 12:40 pm
BY RONALD R. CARPENTER
CLERK

NO. 84362-7

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

**STATE OF WASHINGTON'S MEMORANDUM RESPONDING TO
ORDER DATED SEPTEMBER 11, 2014**

ROBERT W. FERGUSON
Attorney General

DAVID A. STOLIER, WSBA #24071
Senior Assistant Attorney General

ALAN D. COPSEY, WSBA #23305
Deputy Solicitor General

WILLIAM G. CLARK, WSBA #9234
Senior Counsel

OID No. 91087
PO Box 40100-0100
Olympia, WA 98504-0100
(360) 753-6200

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. PROPOSED LEGISLATION AS OF APRIL 24, 2015,
THAT ADDRESSES THE IMPLEMENTATION PLAN IN
SHB 2776 (2010).....4

III. PROPOSED LEGISLATION AS OF APRIL 24, 2015,
THAT ADDRESSES LOCAL LEVIES AND BASIC
EDUCATION SALARIES.....6

 A. House Bill 2239 (“Concerning implementation of a plan
 for fulfilling Article IX obligations”)7

 B. Senate Bill 6103 (“Providing basic education funding”).....8

 C. Senate Bill 6104 (“Improving education financing”)8

 D. Senate Bill 6109 (“Concerning compliance with
 constitutional basic education requirements”)10

IV. CONCLUSION11

TABLE OF AUTHORITIES

Cases

<i>McCleary v. State</i> , 173 Wn.2d 477, 269 P.3d 227 (2012).....	1
---	---

Orders of the Court

Order, <i>McCleary v. State</i> , No. 84362-7 (Wash. Jan. 9, 2014)	1, 2, 3
Order, <i>McCleary v. State</i> , No. 84362-7 (Wash. July 18, 2012).....	11
Order, <i>McCleary v. State</i> , No. 84362-7 (Wash. Sept. 11, 2014).....	1, 2, 3, 11

Statutes

Laws of 2009, ch. 548 (ESHB 2261, 61st Leg., Reg. Sess. (Wash. 2009))	1, 6, 7
Laws of 2010, ch. 236 (SHB 2776, 61st Leg., Reg. Sess. (Wash. 2010)).....	3, 4, 5

Constitutional Provisions

Const. art IX, § 1	1, 3, 7
--------------------------	---------

Pending Legislation

ESHB 1106 4, 5, 6

HB 2239 7

SSB 5077 4, 5, 6

SB 6103..... 8

SB 6104..... 8

SB 6109..... 10

SB 6114..... 7

SJR 8207 7

I. INTRODUCTION

Just over three years ago, the Court issued its decision in *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012). The Court held the State had not complied with its duty under article IX, section 1 of the Washington Constitution to make ample provision for K-12 education. *Id.* at 539. The Court stated it would “defer to the legislature’s chosen means of discharging its article IX, section 1 duty,” but it retained jurisdiction “to monitor implementation of the reforms under ESHB 2261 [Laws of 2009, ch. 548], and more generally, the State’s compliance with its paramount duty” and “to help ensure progress in the State’s plan to fully implement education reforms by 2018.” *Id.* at 545-47.

In its Order dated September 11, 2014, the Court found the State in contempt for failing to submit a complete plan for fully implementing its program of basic education for each school year between January 2014 and the 2017-18 school year, as directed in the Court’s Order of January 9, 2014. Order, *McCleary v. State*, No. 84362-7, at 4 (Wash. Sept. 11, 2014). The September 11, 2014, Order stated that the Court would reconvene to impose sanctions and other remedial measures as necessary if the State did not purge contempt by complying with the Court’s January 9, 2014, Order by the adjournment of the 2015 legislative session. *Id.* at 5. The September 11, 2014, Order directed the following action by the State:

On the date following adjournment of the 2015 session, if the State has not complied with the court's order, the State shall file in the court a memorandum explaining why sanctions or other remedial measures should not be imposed. This memorandum is separate from the court's order requiring an annual progress report. No other pleadings should be filed by any of the parties except at the direction of the court.

Order, *McCleary v. State*, No. 84362-7, at 5 (Wash. Sept. 11, 2014).

The 2015 Legislature will be convening in a special session on April 29, 2015, to complete its work. Although the phrase "adjournment of the 2015 session" may be construed as inclusive of any special session, the State is reading the phrase literally to require that this memorandum be filed upon adjournment of the regular 105-day session, whether the Legislature has completed its work or not. The regular session adjourned on April 24, 2015.

The yardstick for purging contempt is the Court's January 9, 2014, Order, which directed the State to submit

a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year. This plan must address each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB 2776, and must include a phase-in schedule for fully funding each of the components of basic education.

Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014).

The Legislature did not complete its work by the close of the regular session and there has been no final legislative action on the budget

or on other bills proposing remedies for the article IX violations identified by the Court. However, there are a number of bills offered in both chambers of the Legislature that are responsive to the Court's orders. As explained below, both the House and the Senate budget proposals provide appropriations for timely implementation of the plan called for by SHB 2776 (Laws of 2010, ch. 236), and the Legislature is deliberating over legislation that would address the reliance on local levies to pay for basic education salaries. These bills contain provisions that, if enacted in various combinations, would result in compliance with the Court's January 9, 2014, Order and thereby purge contempt. A synopsis of relevant pending legislation is provided below.

Until the Legislature has concluded its work for 2015 and the Governor has acted on the budget and any other education-related legislation that has passed both houses, the State cannot represent to the Court whether actions taken this session achieve compliance with the Court's orders. The Court therefore should defer reconvening to consider whether the State has purged contempt and whether to impose sanctions or other remedial measures until the Legislature has concluded its business for 2015 and the Governor acts on the legislation that passes both houses.

Unless the Court orders otherwise, the State will respond to the September 11, 2014, Order to file "a memorandum explaining why

sanctions or other remedial measures should not be imposed” by filing an updated memorandum after the final special session adjourns and the Governor acts on the budget and pertinent implementing bills the Legislature passes.

**II. PROPOSED LEGISLATION AS OF APRIL 24, 2015,
THAT ADDRESSES THE IMPLEMENTATION PLAN
IN SHB 2776 (2010)**

In the regular session, budgets were passed in both chambers of the Legislature that would produce substantial progress on the implementation plan called for by SHB 2776 (Laws of 2010, ch. 236). Both budget bills—Engrossed Substitute House Bill 1106 (ESHB 1106) passed by the House of Representatives, and Substitute Senate Bill 5077 (SSB 5077) passed by the Senate—appropriate more than \$1.2 billion for basic education policy enhancements.

The plan adopted in SHB 2776 established an implementation schedule. The historic and projected compliance with that schedule for each of the budget bills can be summarized as follows:

- **Transportation.** The new pupil transportation funding formula was to be fully implemented by the 2014-15 school year. Consistent with that deadline, the formula was fully phased in for the 2014-15 school year. In the 2015 supplemental budget, the Legislature increased funding for pupil transportation by

\$15.9 million to reflect cost estimates resulting from improved school district data. Both ESHB 1106 and SSB 5077 would carry that increased funding forward in 2015-17.

- **Materials, Supplies, and Operating Costs.** The new per-student dollar values were to be fully phased in by the 2015-16 school year. Consistent with that deadline, both ESHB 1106 and SSB 5077 would provide full funding of new per-student dollar values for the 2015-16 school year.
- **All-Day Kindergarten.** All-day kindergarten was to be fully phased in by the 2017-18 school year. Both ESHB 1106 and SSB 5077 would provide full funding of all-day kindergarten programs in the 2016-17 school year, one year earlier than the deadline set in SHB 2776.
- **K-3 Class-Size Reduction.** For kindergarten through third grade, general education class size was to be reduced to an average of 17 students per class by the beginning of the 2017-18 school year. Consistent with that deadline, both ESHB 1106 and SSB 5077 would reduce class size in kindergarten through third grade in each year of the biennium, leading to an average of 17 students per class by the beginning of the 2017-18 school year.

- ESHB 1106 would plan for a linear reduction in class size to achieve an average of 17 students per class over three years, by the 2017-18 school year, and would provide funding for that linear reduction over the two years of the biennial budget. The reductions would occur more quickly in designated high-poverty districts. *See* ESHB 1106, § 502.
- SSB 5077 would plan for a nonlinear reduction, reducing class sizes more rapidly in the younger cohorts, but achieving an average of 17 students per class by the 2017-18 school year. The reductions would occur more quickly in designated high-poverty districts. *See* SSB 5077, § 502.

III. PROPOSED LEGISLATION AS OF APRIL 24, 2015, THAT ADDRESSES LOCAL LEVIES AND BASIC EDUCATION SALARIES

The reforms adopted in Engrossed Substitute House Bill 2261 (ESHB 2261) also addressed the reliance on local levies to pay for basic education salaries. A number of bills were introduced during the regular session addressing various components of this very complex issue. Four

bills, one in the House and three in the Senate, provide a more comprehensive plan. We provide a brief synopsis of each bill.¹

A. House Bill 2239 (“Concerning implementation of a plan for fulfilling Article IX obligations”)

- Sets out a plan for remedying the deficiencies in state funding support for salary allocations to school districts by fully implementing all aspects of ESHB 2261 by September 1, 2018. This plan contains specific annual benchmarks by which the State’s progress may be measured.
- Identifies interdependent components that need to be addressed, including collecting data on actual school district expenditures on supplemental contracts, establishing a new salary allocation model to include a regional salary factor, defining the scope of non-basic education enrichment programs for the purpose of local levy spending, reviewing the local effort assistance program, and adjusting local levy rates and levy collections.
- Establishes the Washington Education Funding Council to collect data and advise and report to the Legislature and the Governor.

¹ In addition to the four bills profiled here, SB 6114 and SJR 8207 address tax restructuring to reduce school district dependence on local levy revenues.

- Establishes annual benchmarks, including deadlines for the Council to submit data and recommendations, and commitments to enact responsive legislation in the 2016 and 2017 legislative sessions.
- Provides that the Legislature, by June 30, 2017, must enact legislation that establishes a new salary allocation model for the 2018-19 school year, makes appropriations to fund the model, establishes new levy rates or bases, and considers changes to tax laws as may be necessary to complement property tax levy changes.

B. Senate Bill 6103 (“Providing basic education funding”)

- Expresses an intent to phase-in a new compensation system to be completed by the 2021-22 school year.
- Reduces local levy authority until it reaches one dollar per one thousand dollars of assessed valuation within the school district.
- Enacts changes to local effort assistance program.

C. Senate Bill 6104 (“Improving education financing”)

- Begins phasing in an enhanced salary allocation schedule beginning in the 2017-18 school year, to be completed by the 2022-23 school year.

- Gradually eliminates grandfathered differential salary allocation rates to school districts over the course of the phase-in period by enhancing allocations first to lower-allocation districts until all districts are at the same level.
- Prescribes year-by-year salary grids during implementation.
- During implementation, funds certificated instructional staff salary allocations using the greater of the current salary grid adjusted for inflation or the new salary grid specified in the bill.
- Requires periodic labor market analysis to inform salary levels going forward.
- Allows local salary enhancements for non-basic education activities only, limited to no more than ten percent above the salary allocation schedule.
- Convenes a local levy working group to study and make recommendations on equitable ways to reduce local levies commensurate with increases in state-funded salary allocations.
- Raises revenue through a capital gains tax.

D. Senate Bill 6109 (“Concerning compliance with constitutional basic education requirements”)

- Assumes state responsibility for providing sufficient funds to attract and retain competent teachers by using the state common school levy and prescribing a new statewide salary schedule.
- Enacts a framework for certificated instructional staff salaries with the actual schedule to appear in the appropriations act. The new salary schedule will include a localization factor. School districts must use the schedule to distribute salaries.
- Phases in the new salary schedule beginning in the 2017-18 school year, to be completed by the 2018-19 school year.
- Phases in additional salary allocations for certificated administrative and classified staff.
- Adds periodic cost of living adjustments and wage market analysis to maintain wage levels.
- Decreases local levy funding and limits use of levy funds to non-basic education enhancements. Adds controls on local salary enhancements. Requires school districts to establish a new local revenue fund and requires separate accounting for

local revenues. Adds enhanced auditing standards for compliance with levy revenue usage limitations.

- Establishes a school employees' benefits board for a consolidated school district employees purchasing program in the state Health Care Authority.
- Provides that the State must collect phased-in levy rates for the state levy for support of common schools.

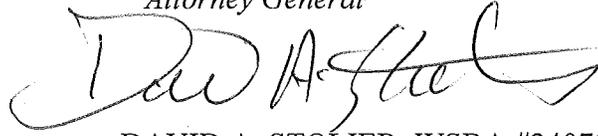
IV. CONCLUSION

In the Order dated September 11, 2014, the Court ordered that no pleadings other than this memorandum should be filed by any party except at the direction of the Court. Because the Governor has called the Legislature into a special session beginning April 29, 2015, the State will assume (1) that the Court will expect the State to file an updated memorandum at the close of the final session of the 2015 Legislature, and (2) that the updated memorandum will be due the day after the Governor acts on the budget or the last *McCleary*-related bill passed by the Legislature. Because the September 11, 2014, Order noted that this memorandum is separate from the Court's order requiring an annual progress report, the State also will assume that report will be due in the normal course, as directed in the July 2012 Order. Order, *McCleary v. State*, No. 84362-7, at 2 (Wash. July 18, 2012).

RESPECTFULLY SUBMITTED this 27th day of April 2015.

ROBERT W. FERGUSON

Attorney General

A handwritten signature in black ink, appearing to read "David A. Stolier". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

DAVID A. STOLIER, WSBA #24071

Senior Assistant Attorney General

ALAN D. COPSEY, WSBA #23305

Deputy Solicitor General

WILLIAM G. CLARK, WSBA #9234

Senior Counsel

OID No. 91087

PO Box 40100-0100

Olympia, WA 98504-0100

(360) 753-6200

CERTIFICATE OF SERVICE

I certify that I served a copy of the State of Washington's Memorandum Responding to Order Dated September 11, 2014, via electronic mail and U.S. Mail, postage paid, upon the following:

Thomas Fitzgerald Ahearne	ahearne@foster.com
Christopher Glenn Emch	emchc@foster.com
Adrian Urquhart Winder	winda@foster.com
Kelly Ann Lennox	lennk@foster.com
Foster Pepper PLLC	
1111 3rd Ave., Ste. 3400	
Seattle, WA 98101	

I certify under penalty of under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 27th day of April 2015, at Olympia, Washington.


KRISTIN D. JENSEN
Confidential Secretary